

§ 3.21

shall be treated as payable to that veteran's surviving spouse, if the surviving spouse is not entitled to death compensation, dependency and indemnity compensation or death pension for that month and, if negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (c)(1) of this section. However, if such payment is in an amount less than the amount of the benefit under paragraph (c)(1) of this section, the unpaid difference shall be treated in the same manner as an accrued benefit under § 3.1000 of this part.

(Authority: 38 U.S.C. 5310(b))

[48 FR 34471, July 29, 1983, as amended at 62 FR 35422, July 1, 1997; 64 FR 30392, June 8, 1999]

§ 3.21 Monetary rates.

The rates of compensation, dependency and indemnity compensation for surviving spouses and children, and section 306 and old-law disability and death pension, are published in tabular form in appendix B of the Veterans Benefits Administration Manual M21-1 and are to be given the same force and effect as if published in the regulations (title 38, Code of Federal Regulations). The maximum annual rates of improved pension payable under Pub. L. 95-588 (92 Stat. 2497) are set forth in §§ 3.23 and 3.24. The monthly rates and annual income limitations applicable to parents' dependency and indemnity compensation are set forth in § 3.25.

CROSS REFERENCES: Section 306 pension. See § 3.1(u). Old-law pension. See § 3.1(v). Improved pension. See § 3.1(w).

[44 FR 45932, Aug. 6, 1979]

§ 3.22 DIC benefits for survivors of certain veterans rated totally disabled at time of death.

(a) Even though a veteran died of non-service-connected causes, VA will pay death benefits to the surviving spouse or children in the same manner as if the veteran's death were service-connected, if:

(1) The veteran's death was not the result of his or her own willful misconduct, and

(2) At the time of death, the veteran was receiving, or was entitled to re-

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ceive, compensation for service-connected disability that was:

(i) Rated by VA as totally disabling for a continuous period of at least 10 years immediately preceding death;

(ii) Rated by VA as totally disabling continuously since the veteran's release from active duty and for at least 5 years immediately preceding death; or

(iii) Rated by VA as totally disabling for a continuous period of not less than one year immediately preceding death, if the veteran was a former prisoner of war who died after September 30, 1999.

(Authority: 38 U.S.C. 1318(b))

(b) For purposes of this section, "entitled to receive" means that the veteran filed a claim for disability compensation during his or her lifetime and one of the following circumstances is satisfied:

(1) The veteran would have received total disability compensation at the time of death for a service-connected disability rated totally disabling for the period specified in paragraph (a)(2) of this section but for clear and unmistakable error committed by VA in a decision on a claim filed during the veteran's lifetime; or

(2) Additional evidence submitted to VA before or after the veteran's death, consisting solely of service department records that existed at the time of a prior VA decision but were not previously considered by VA, provides a basis for reopening a claim finally decided during the veteran's lifetime and for awarding a total service-connected disability rating retroactively in accordance with §§ 3.156(c) and 3.400(q)(2) of this part for the relevant period specified in paragraph (a)(2) of this section; or

(3) At the time of death, the veteran had a service-connected disability that was continuously rated totally disabling by VA for the period specified in paragraph (a)(2), but was not receiving compensation because:

(i) VA was paying the compensation to the veteran's dependents;

(ii) VA was withholding the compensation under authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;